

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
UNITED STATES OF AMERICA, : 17-cr-00459-AMD-1
:
- versus - : U.S. Courthouse
WILLIAM KELLY, : Brooklyn, New York
Defendant :
-----X : August 29, 2017

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE ROBERT M. LEVY
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

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Proceedings

1 THE CLERK: Criminal Cause for a Pleading in
2 the matter of United States v. William Kelly, case number
3 17-cr-459.

4 Please state your appearances for the record.

5 MR. KESSLER: Good afternoon, your Honor.

6 David Kessler for the United States.

7 THE COURT: Good afternoon.

8 MR. MCGUIRE: Good afternoon, your Honor.

9 Brendan McGuire and Margaret Artz on behalf of
10 Mr. Kelly, who is here with us today.

11 THE COURT: Good afternoon. Good afternoon,
12 Mr. Kelly. Can you say your name for the record, please?

13 THE DEFENDANT: William Kelly. I will have you
14 placed under oath in just a moment.

15 W I L L I A M K E L L Y,

16 called as a witness, having been first duly sworn,
17 was examined and testified as follows:

18 THE COURT: What is Mr. Kelly going to do
19 today?

20 MR. MCGUIRE: Your Honor, Mr. Kelly's intention
21 is to plead guilty to an information to be filed today.

22 THE COURT: Okay. Is he planning on waiving
23 indictment?

24 MR. MCGUIRE: He is.

25 THE COURT: And has he consented to have a plea

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1 taken before a magistrate judge?

2 MR. MCGUIRE: He has.

3 THE COURT: All right, Mr. Kelly, you're under
4 oath. I'm going got ask you a lot of questions. If
5 there is anything that you don't understand or you would
6 like to discuss with your attorney, please feel free to
7 do that privately.

8 If you have any questions you would like to ask
9 me, you can also ask me, as well.

10 Do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. So the first thing
13 we're going to do here is talk about the waiver of
14 indictment. You signed a form here that says that you
15 are willing -- you're waiving indictment in this case.

16 Do you understand what that means?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. And did you discuss
19 that with your counsel?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. So do you understand
22 that you are-- I'll just read the waiver here. You've
23 been accused of one or more offenses punishable by
24 imprisonment for more than one year.

25 I'm going to advise you that you have a right

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1 to have the charges against you presented to a grand jury
2 to see whether there's probable cause, meaning there's
3 sufficient evidence to believe it's probable that you
4 committed the crime. And that's the grand jury's a
5 protection for citizens. It allows the charges to be
6 screened, not just by a prosecutor but also by your
7 peers, a grand jury.

8 You have a right to have the charges against
9 you screened by a grand jury and have them make an
10 independent determination whether or not there is
11 probable cause to bring them.

12 Do you understand?

13 THE DEFENDANT: Yes.

14 THE COURT: And if you don't -- well, do you
15 understand also that the charges against you are
16 potentially serious?

17 THE DEFENDANT: Yes.

18 THE COURT: And that there is a possibility
19 that a grand jury -- again, I don't know the facts of
20 your case, but there is a possibility that a grand jury
21 might find that there's not probable cause to indict you.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: And that if you proceed by
25 information, you're giving up your right to have the

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1 grand jury screen the charges against you and you will be
2 proceeding with criminal charges brought against you as
3 written in an information that's been written by the
4 prosecution.

5 THE DEFENDANT: Yes.

6 THE COURT: Have you seen the information in
7 this case?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand what the charges
10 are?

11 THE DEFENDANT: Yes.

12 THE COURT: And just to make sure that you
13 understand, if you proceed by information, you would be
14 charged information with access device fraud and the
15 information states, "In or about and between November
16 2016 and May 2017, both dates being approximate and
17 inclusive, within the Eastern District of New York,"
18 that's our jurisdiction here, "and elsewhere, the
19 defendant William Kelly, together with others, did
20 knowingly and with intent to defraud, produce, traffic
21 in, have control or custody of and possess device making
22 equipment in a manner affecting interstate and foreign
23 commerce."

24 Do you understand that's the charge --

25 THE DEFENDANT: Yes.

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1 THE COURT: -- that will proceed under? And
2 you're waiving your right or giving up your right to have
3 this charge or similar charges presented to a grand jury
4 to determine that there is probable cause.

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. Are you making this decision
7 voluntarily?

8 THE DEFENDANT: Yes.

9 THE COURT: Anybody force you or threaten you
10 to make you agree to waive indictment?

11 THE DEFENDANT: No.

12 THE COURT: Anybody promise you anything to
13 induce you to do so?

14 THE DEFENDANT: No.

15 THE COURT: So do you understand the charge in
16 the information?

17 THE DEFENDANT: Yes.

18 THE COURT: What is the government prepared to
19 prove if this case were to go to trial?

20 MR. KESSLER: Your Honor, the government is
21 prepared to prove that during the time period in the
22 information, the defendant possessed one or more ATM
23 skimming devices, basically devices that help download
24 information about individual's bank account numbers,
25 personal identification numbers and things like that,

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1 from ATM machines and to re-encode them onto other cards,
2 so that card -- those cards can be used to withdraw
3 money.

4 So the government would prove that the
5 defendant possessed ATM or the skimming equipment, that
6 is the equipment needed to make the cards, to further the
7 access device fraud.

8 The evidence includes photographs of the
9 defendant involved in ATM skimming activity and the
10 defendant's post-arrest statement that he possessed
11 device making equipment.

12 THE COURT: And would the government also be
13 able to prove that he did so in a manner affecting
14 interstate and foreign commerce?

15 MR. KESSLER: Yes, so the ATM skimming
16 operation itself involves taking and using United States
17 currency. It involves electronic signals that run from
18 ATM devices back to servers that connect with the banks,
19 the device making equipment consists of components that
20 come from multiple states and then just based on the text
21 in the complaint, the defendant has been multiple states
22 with device making equipment, both on a photograph in I
23 believe Pennsylvania and then by his own statements in
24 Brooklyn.

25 THE COURT: And there is also an allegation

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1 about foreign commerce, as well?

2 MR. KESSLER: There is no specific additional
3 allegation about foreign commerce. So we charge in the
4 conjunctive but we can prove in the disjunctive.

5 THE COURT: Okay. I guess we'll wait for that.

6 Okay.

7 Do you have any questions about what the
8 government just explained?

9 THE DEFENDANT: No.

10 THE COURT: All right. What is your full name?

11 THE DEFENDANT: William Anthony Kelly.

12 THE COURT: How old are you?

13 THE DEFENDANT: 32.

14 THE COURT: What's your last level of
15 schooling?

16 THE DEFENDANT: Eighth grade

17 THE COURT: Are you now or have you recently
18 been in the care of a doctor or a psychiatrist?

19 THE DEFENDANT: No.

20 THE COURT: In the past 24 hours, have you
21 taken any kind of medicine or pills?

22 THE DEFENDANT: No.

23 THE COURT: Narcotic drugs or alcoholic
24 beverages?

25 THE DEFENDANT: No.

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1 THE COURT: Have you ever been hospitalized or
2 treated for alcoholism, narcotic addition or a mental or
3 emotional problem?

4 THE DEFENDANT: Yes.

5 THE COURT: Could you explain?

6 THE DEFENDANT: I've been hospitalized and
7 treated for opiate abuse.

8 THE COURT: When was that?

9 THE DEFENDANT: 2011.

10 THE COURT: And how long were you in?

11 THE DEFENDANT: I think 30 days.

12 THE COURT: And since then?

13 THE DEFENDANT: No.

14 THE COURT: No treatment or hospitalization?

15 THE DEFENDANT: Oh, I was on methadone
16 treatment up until 2016.

17 THE COURT: So at this point, is your mind
18 clear?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand why you're here
21 and what's happening here today?

22 THE DEFENDANT: Yes.

23 THE COURT: To your attorney, have you
24 discussed this matter fully with your client?

25 MR. MCGUIRE: I have, your Honor.

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1 THE COURT: Does he understand the rights he
2 would be waiving by pleading guilty?

3 MR. MCGUIRE: He does.

4 THE COURT: Is he capable of understanding the
5 nature of these proceedings?

6 MR. MCGUIRE: He is.

7 THE COURT: Do you have any doubts as to his
8 competence to plead at this time?

9 MR. MCGUIRE: I do not.

10 THE COURT: Have you advised him of the
11 possible maximum and minimum sentence and fine and other
12 penalties that he is facing?

13 MR. MCGUIRE: I have.

14 THE COURT: Have you explained to him how the
15 maximum fine and the restitution provisions work?

16 MR. MCGUIRE: I have, your Honor.

17 THE COURT: Did you advise him that there's no
18 guarantee of what his sentence will be?

19 MR. MCGUIRE: I did, your Honor.

20 THE COURT: And have you advised him that if
21 he's not a citizen, he could face deportation as a result
22 of the guilty plea?

23 MR. MCGUIRE: He is a citizen. So I did not
24 advise him of that.

25 THE COURT: I am going to advise you of that

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1 because I have to.

2 Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. And does he understand there
5 is no guarantee what the ultimate sentence will be in
6 this case?

7 MR. MCGUIRE: We covered that at length, your
8 Honor.

9 THE COURT: Any questions about what your
10 lawyer said?

11 THE DEFENDANT: No.

12 THE COURT: Have you discussed your case fully
13 with him fully?

14 THE DEFENDANT: Yes.

15 THE COURT: Are you satisfied to have him
16 represent you?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. So I want to be sure you
19 understand your rights because you do have a number of
20 constitutional and federal rights, statutory rights, that
21 you will give up if you plead guilty.

22 Do you understand that you don't have to plead
23 guilty?

24 THE DEFENDANT: Yes.

25 THE COURT: It's your right to plead not guilty

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1 if you wish. If you continue to plead not guilty, it's
2 your right under the Constitution and laws of the United
3 States to a speedy, public trial, by jury with the help
4 of your lawyers on the charges contained in the
5 information.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: And if at any point, you are unable
9 to afford to retain an attorney, the Court will make sure
10 that you have an attorney to represent you at no cost to
11 you, all the way through trial and if you're convicted,
12 through an appeal. So basically at all stages of the
13 proceedings if you need it.

14 Do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: At your trial, you would be
17 presumed innocent. The government would have to overcome
18 that presumption and prove your guilt by competent
19 evidence and persuade a jury beyond a reasonable doubt of
20 any charges that it wishes to convict you of.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Even if you did everything that the
24 government has alleged, you still have a right to a trial
25 and it is possible that the jury might find you not

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1 guilty if the jury is not persuaded beyond a reasonable
2 doubt that you did it.

3 Do you understand?

4 THE DEFENDANT: Yes.

5 THE COURT: Proof beyond a reasonable doubt, do
6 you understand what that standard means and how it works?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. And do you understand that
9 you would not have to present any evidence to prove that
10 you're innocent? You wouldn't have to present any
11 defense at all. The burden is entirely on the government
12 to prove beyond a reasonable doubt that you are guilty?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. Any questions about anything
15 so far?

16 THE DEFENDANT: No.

17 THE COURT: If you decide to go to trial, the
18 government would have to bring its witnesses and its
19 evidence to court. The testimony of its witnesses would
20 be in your presence. Your lawyers would have a right to
21 cross-examine them, object to the government's evidence,
22 present evidence in your defense, and compel witnesses
23 who you wished to call to appear at trial.

24 Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: And if you do go to trial, you
2 would have a choice whether or not to testify. It's your
3 right to testify in your defense but it's also your right
4 under the Fifth Amendment to remain silent and not to
5 incriminate yourself.

6 Do you understand how that works?

7 THE DEFENDANT: Yes.

8 THE COURT: So if you decided to go to trial
9 but not to testify, the Court would instruct the jurors
10 that they couldn't hold that against you and assume that
11 you're guilty because you didn't speak up in your own
12 defense.

13 Do you understand?

14 THE DEFENDANT: Yes.

15 THE COURT: But if you do plead guilty and the
16 Court accepts your guilty plea, you will be giving up
17 your rights to a trial, your right to remain silent, all
18 of the other rights that I've just explained. You won't
19 have a trial at all. The Court will just enter a
20 judgment that you're guilty based on what you say here
21 today.

22 Do you understand?

23 THE DEFENDANT: Yes.

24 THE COURT: And in order for me to recommend
25 that the Court accept your guilty plea -- oh, I don't

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1 think we've gone through the consent. So we're going to
2 have to do that.

3 So anyway, in order for me to recommend and the
4 Court to determine whether or not to accept your guilty
5 plea, the Court has to be convinced that you did, in
6 fact, do what you're charged with.

7 And so, I'm going to have to ask you some
8 questions. You're going to have to admit your guilt.
9 And when you do that, you give up your right to remain
10 silent and not to incriminate yourself.

11 Do you understand?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. So I do have a consent form
14 here and in that form, it says that you agree to have me,
15 a magistrate judge, hear your guilty plea and make a
16 recommendation to Judge Donnelly whether or not to accept
17 it. You don't have to have me hear your plea. Judge
18 Donnelly would be perfectly happen to hear it. There
19 will be no harm or prejudice to you -- excuse me -- if
20 you chose to do that. No one would be offended.

21 Do you understand?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. Counsel, did you speak
24 to your client about consent?

25 MR. MCGUIRE: I did, your Honor.

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1 THE COURT: Are you satisfied that his consent
2 to have me hear the plea is knowing and voluntary?

3 MR. MCGUIRE: I am.

4 THE COURT: And did you sign this consent form?

5 THE DEFENDANT: Yes.

6 THE COURT: All right. Okay. Do you have any
7 questions about anything we said so far?

8 THE DEFENDANT: No.

9 THE COURT: So are you willing to give up your
10 right to a trial and your other rights?

11 THE DEFENDANT: Yes.

12 THE COURT: And do you wish to plead guilty?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. So I understand you're
15 pleading guilty pursuant to an agreement that's been
16 marked as Court Exhibit 1. I have a signed copy here, I
17 believe that's dated today, August 29th.

18 Is this the only agreement at this time between
19 the government and the defense?

20 MR. KESSLER: Yes, your Honor, the written plea
21 agreement and then the last few pages which are labeled
22 Exhibit A, in total constitute the agreement between the
23 government and the defense.

24 MR. MCGUIRE: That's correct, your Honor.

25 We've reviewed both the agreement itself, as well as the

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1 conditions attached in the exhibit with Mr. Kelly.

2 THE COURT: And are you satisfied he
3 understands the agreement and the conditions?

4 MR. MCGUIRE: I am.

5 THE COURT: All right. Mr. Kelly, have you
6 discussed the agreement with your lawyers?

7 THE DEFENDANT: Yes.

8 THE COURT: Have you had a chance to read it
9 yourself?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand it all?

12 THE DEFENDANT: Yes.

13 THE COURT: Is there anything in it --
14 sometimes it's complicated. Is there anything in the
15 agreement that you would like to ask either me or your
16 lawyer about at this time?

17 THE DEFENDANT: No.

18 THE COURT: And so you feel comfortable with
19 it?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay. So paragraph 1 says that
22 you'll waive indictment, which you've done and plead
23 guilty to an information to be filed in this district
24 which I read to you and which Mr. Kessler explained.

25 And if you do that, you are facing charges of a

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1 violation of 18 USC 1029(a)(4) which is use of an access
2 -- which is access device fraud.

3 If you do plead guilty, the charge carries with
4 it the following penalties under the statute. A minimum
5 term of imprisonment of zero years in prison and a
6 maximum term of imprisonment of 15 years in prison.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: And if you are sentenced to prison,
10 you can be sentenced to what's called supervised release
11 after you are released for a maximum of three years.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: And do you understand what that
15 means?

16 THE DEFENDANT: Yes.

17 THE COURT: So you are released on conditions,
18 and supervised by the probation department. If you
19 violate any condition of your release, there is a
20 separate penalty from the sentence that you would get
21 from the guilty plea. And that is you may be sentenced
22 to up to two separate years, additional years, without
23 credit for the time you had been in prison on this case
24 before you're released or the time you had served on
25 post-release supervision.

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1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you have any questions about
4 anything so far?

5 THE DEFENDANT: No.

6 THE COURT: All right. There's a maximum fine
7 of the greater of \$250,000 or twice the pecuniary loss or
8 twice the pecuniary gain from the offense.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: There's a provision for
12 restitution. It is mandatory in the full amount of each
13 victim's losses as determined by the Court.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: And there's a fee called a special
17 assessment of \$100 that also is payable to the Court.

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Any questions?

20 THE DEFENDANT: No.

21 THE COURT: Sentencing. Do you understand what
22 the sentencing guidelines are?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. So they're basically
25 rules or guides that help Judge Donnelly decide how to

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1 sentence you. She is going to calculate your guideline
2 range. She needs to consider them but she doesn't have
3 to sentence you entirely based on the guidelines. There
4 are other factors, as well, that she has to consider.

5 The guidelines are just one factor. In
6 addition to those factors, she also has to consider under
7 USC 3553(a), such things as the circumstances of the
8 offense, your background, your respect for the law, what
9 would be fair or just punishment, deterrence, protecting
10 the public from further crimes and your individual need
11 for what's called effective correctional treatment.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. So as I said, there's
15 no guarantee what your guideline range will be or you'll
16 be sentenced within the guideline range or what your
17 sentence will be. You will not be able to take back your
18 guilty plea, even if the sentence is not within the
19 guideline range.

20 Do you understand?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay. Any questions?

23 THE DEFENDANT: No.

24 THE COURT: All right. Paragraph 2 discusses
25 the guidelines in this case. Since we don't know what

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1 Judge Donnelly is going to determine your guideline range
2 to be, anything that you've heard about the guidelines is
3 just an estimate at this point, as it pertains to you.

4 Paragraph 2 contains I believe the government's
5 guideline estimate, is that correct?

6 MR. KESSLER: Yes.

7 THE COURT: Would you put that on the record
8 please?

9 MR. KESSLER: Yes. There's an adjusted offense
10 level of eight which is computed by taking a base offense
11 level of six from 2(b) (1.1) (A) (2) of the guidelines, a
12 two point enhancement for use of access devices, no
13 enhancement for loss amount, and a total of eight.

14 Then carrying over in the agreement from page 2
15 to page 3, assuming the defendant falls in criminal
16 history category one, that would lead to a range of
17 imprisonment of zero to six months.

18 The defendant would then, based on his plea
19 today, be entitled to a two point reduction for
20 acceptance of responsibility.

21 THE COURT: And in paragraph -- is that
22 agreeable to --

23 MR. MCGUIRE: It is, your Honor.

24 THE COURT: Okay. Do you understand what the
25 government said?

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1 THE DEFENDANT: Yes.

2 THE COURT: Again, there's no guarantee. This
3 is just what the government estimates at this point.

4 At the end of paragraph 2, however, there's
5 also an agreement that the -- I'll just read it out --
6 "Pursuant to Rule 11(c)(1)(B) of the Federal Rules of
7 Criminal Procedure, based on information now known to the
8 parties, the parties agree to jointly recommend to the
9 Court that a sentence of five years probation with the
10 special conditions reflected in Exhibit A to this
11 agreement is appropriate. However, that recommendation
12 shall not be binding upon the Court."

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Any questions at all?

16 THE DEFENDANT: No.

17 THE COURT: Okay. Anything anyone would like
18 to add about that agreement?

19 MR. KESSLER: No.

20 MR. MCGUIRE: No, your Honor.

21 THE COURT: Okay. Paragraph 3 says that Mr.
22 Kelly, you agree not to file an appeal or otherwise
23 challenge your conviction or sentence if you receive a
24 term of imprisonment of six months or less. And/or a
25 term of probation of five years or less and/or any of the

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1 special conditions listed in Exhibit A.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Is there anything else in this
5 agreement that any parties would like to place on the
6 record?

7 MR. KESSLER: No, your Honor.

8 MR. MCGUIRE: No, your Honor.

9 THE COURT: Do you have any questions for me or
10 for your lawyer before we proceed?

11 THE DEFENDANT: No.

12 THE COURT: Are you ready to plead?

13 THE DEFENDANT: Yes.

14 THE COURT: Is there any reason why Mr. Kelly
15 should not plead guilty to the information?

16 MR. MCGUIRE: No, your Honor.

17 THE COURT: So, Mr. Kelly, as to the
18 information, the sole charge of access device fraud, how
19 do you plead to Count 1; guilty or not guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: Are you pleading guilty
22 voluntarily?

23 THE DEFENDANT: Yes.

24 THE COURT: Has anybody forced you or
25 threatened you to make you agree to plead guilty?

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1 THE DEFENDANT: No.

2 THE COURT: Did anybody promise you anything
3 that's not in the agreement?

4 THE DEFENDANT: No.

5 THE COURT: Has anybody promise you what your
6 sentence will be?

7 THE DEFENDANT: No.

8 THE COURT: All right. So the information says
9 that in or about and between November 2016 and May 2017
10 within the Eastern District of New York, you did
11 something. What is it you did?

12 THE DEFENDANT: I possessed an ATM skimming
13 device.

14 THE COURT: And what did you do with it?

15 THE DEFENDANT: I used it to obtain credit card
16 information, so I could copy -- make new cards and remove
17 money from bank accounts.

18 THE COURT: Okay. And you did that using an
19 ATM?

20 THE DEFENDANT: Yeah.

21 THE COURT: Okay. It is charged that you did
22 this together with others. Is that, in fact -- did you
23 do this alone or did you do this with others?

24 THE DEFENDANT: With others.

25 THE COURT: Is there anything else that the

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1 government thinks should be placed on the record?

2 MR. KESSLER: No, except to the extent my
3 previous discussion addressed the interstate commerce
4 proof --

5 THE COURT: Right.

6 MR. KESSLER: -- that is not addressed by Mr.
7 Kelly.

8 THE COURT: And that's incorporated by
9 reference.

10 MR. KESSLER: That is incorporated by
11 reference.

12 THE COURT: Yes.

13 MR. MCGUIRE: We do not dispute that.

14 THE COURT: Okay. Anything else the defense
15 thinks should be added at this point?

16 MR. MCGUIRE: No, your Honor.

17 THE COURT: Okay. Mr. Kelly, I find that
18 you're acting voluntarily, you fully understand your
19 rights, the charges against you, the rights you're giving
20 up by pleading guilty, the consequences of a guilty plea,
21 including the possible sentence, fine and other
22 conditions, restitution -- well, everything that I
23 mentioned earlier. That you understand there's no
24 guarantee what your sentence will be or even what your
25 guideline range will be and that there is a factual basis

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1 for the plea, that you did, in fact, commit the crime of
2 access device fraud as alleged in the information.

3 I, therefore, recommend that the Court accept
4 your plea of guilty to the information.

5 THE CLERK: Sentencing will occur on December
6 13th, 2017 at 10:30 a.m. before Judge Donnelly.

7 THE COURT: So, do you understand there will be
8 a probation investigation report. You'll be meeting with
9 the probation department. They will interview you and
10 you have the right to have your lawyer there.

11 You will have an opportunity to comment on the
12 report and so will the government and then Judge Donnelly
13 will make a ruling.

14 Any questions?

15 THE DEFENDANT: No.

16 THE COURT: Anything else from any party?

17 MR. KESSLER: No.

18 MR. MCGUIRE: No, your Honor.

19 THE COURT: Okay. So there's a detention order
20 in effect, correct? There's nothing else that needs to
21 be done from the Court at this point?

22 MR. KESSLER: My understanding is there is no
23 bail application today.

24 MR. MCGUIRE: There is not.

25 THE COURT: Okay.

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1 MR. MCGUIRE: Thank you.

2 THE COURT: All right. Thank you. Good luck.

3 MR. KESSLER: Thank you.

4 THE COURT: Mr. Kessler, are you filing the
5 information or are we?

6 MR. KESSLER: This is always a matter of
7 confusion to me. I think -- I am happy to file it. My
8 understanding it's normally your clerk is the one who
9 files it but --

10 THE COURT: We are very happy to file it.

11 MR. KESSLER: Okay. Probably safer.

12 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 12th day of September, 2017.


Linda Ferrara

CET**D 656
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